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April 1, 2004

Via Electronic Comment Filing System (ECFS)

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 04-75
Channel 7, Billings, MT; FCC File No. BNPTVL-20000829ALP; FIN 129207
Channel 31, Billings, MT; FCC File No. BNPTVL-20000829AJW; FIN 127852
Channel 41, Billings, MT; FCC File No. BNPTVL-20000829AJU; FIN 127846
Channel 46, Billings, MT; FCC File No. BNPTVL-20000829AJT; FIN 127841
Channel 49, Billings, MT; FCC File No. BNPTVL-20000829AHO; FIN 127246
Channel 11, Butte, MT; FCC File No. BNPTVL-20000829AHM; FIN 127244
Channel 47, Butte, MT; FCC File No. BNPTVL-20000829AHL; FIN 127243
Channel 51, Butte, MT; FCC File No. BNPTVL-20000829AHK; FIN 127242
Channel 7, Great Falls, MT; FCC File No. BNPTVL-20000829AHJ; FIN 127241
Channel 21, Great Falls, MT; FCC File No. BNPTVL-20000829AHI; FIN 127239
Channel 28, Great Falls, MT; FCC File No. BNPTT-20000828BIK; FIN 131183
Channel 43, Great Falls, MT; FCC File No. BNPTVL-20000829AHH; FIN 127238
Channel 51, Great Falls, MT; FCC File No. BNPTVL-20000829AHF; FIN 127236
Channel 10, Missoula, MT; FCC File No. BNPTVL-20000829AJF; FIN 127781
Channel 12, Missoula, MT; FCC File No. BNPTVL-20000829AJG; FIN 127783
Channel 43, Missoula, MT; FCC File No. BNPTVL-20000829AJJ; FIN 127790
Channel 51, Missoula, MT; FCC File No. BNPTVL-20000829AJL; FIN 127796
Comments on Public Notice DA 04-747

Dear Ms. Dortch:

On behalf of Cordillera Communications, Inc. (together with its subsidiaries, "Cordillera"), we hereby submit these Comments on the Media Bureau's March 19, 2004, Public Notice in MB Docket No. 04-75. Cordillera owns and operates television stations that compete against television stations owned by Max Media of Montana LLC (together with its affiliates, "Max Media") and Sunbelt Communications, Inc. (together with its affiliates, "Sunbelt").

The Public Notice invited comment on the Request for Expedited Declaratory Ruling (the "Request") filed by Max Media regarding an alleged agreement between Sunbelt and the NBC Network. As indicated in the Public Notice, Max Media's Request is interrelated with its objections (the "Max Media Objections") to applications filed by Sunbelt for new low power and television translator applications (the "Sunbelt Applications"). The Bureau accorded "Permit But Disclose" status to the Request, the Max Media Objections, and the Sunbelt Applications.

April 1, 2004

Page 2

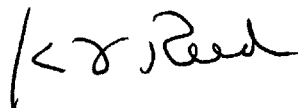
Cordillera has determined that at least some of the Sunbelt Applications violate bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. Consequently, Cordillera in January 2004 filed Informal Objections against the deficient applications, copies of which are attached hereto and hereby incorporated by reference. Sunbelt has not responded to the Informal Objections. Because the issues raised in the Max Media Objections and Cordillera's Informal Objections are interrelated, the Media Bureau should consolidate Cordillera's Informal Objections with the other materials in this docket and accord "Permit But Disclose" status to Cordillera's filings.

Cordillera notes that the Max Media Objections raise troubling questions about Sunbelt's compliance with other Commission requirements. First, Max Media demonstrated in its submission the existence of a glaring inconsistency between Sunbelt's representations to the Commission of its financial inability to construct even "low power" digital television facilities on the one hand, and, on the other hand, Sunbelt's representations in the Sunbelt Applications that it was and remains today financially qualified to construct dozens of new low power and television translator applications around the country.

Second, Max Media has demonstrated that Sunbelt did not comply with the Commission's clear and explicit directive in its *1999 Television Ownership Order* that all non-grandfathered Local Marketing Agreements must be divested no later than August 6, 2001. *See Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, ¶ 133 (1999), *recon. denied in relevant part*, 16 FCC Rcd. 1067, ¶¶ 51-55 (2000), *remanded on other grounds sub nom. Sinclair Broad. Group v. FCC*, 284 F3d 148, 158-65 (DC Cir 2002). In opposing Max Media's Petition to Revoke Licenses, Sunbelt confirmed that, rather than divest its non-grandfathered LMAs in the Helena and Idaho Falls television markets, it instead merely submitted Petitions for Stay of the Commission's order – on the very day that the LMAs became unlawful. Those Petitions offered no showing under the *Virginia Petroleum* standards and otherwise offer no basis for the requested relief.

The compliance issues raised in the Max Media Oppositions and Cordillera's Informal Objections warrant a comprehensive investigation by both the Media Bureau and the Enforcement Bureau and, accordingly, should be consolidated in this docket. These issues are tremendously important, because continual lack of compliance by Sunbelt will have disproportionately harmful effects on diversity and competition in the small, primarily rural markets of Montana in which Cordillera, Max Media, and Sunbelt compete. Consequently, Cordillera respectfully urges the Bureau to consolidate the related pleadings and expeditiously resolve the compliance issues raised therein.

Respectfully submitted,



Kevin F. Reed
Kevin P. Latek

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April 2004, I caused a copy of the foregoing Comments (including attachments) to be served by U.S. Mail, first class postage prepaid, on the following:

David H. Soloman
Chief, Enforcement Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Barbara Kreisman
Chief, Video Division
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445 Twelfth Street, S.W.
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Video Division
Mass Media Bureau
Federal Communications Commission
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Jonathan Lichstein
Beartooth Communications Company
1500 Foremaster Lane
Las Vegas, NV 89101

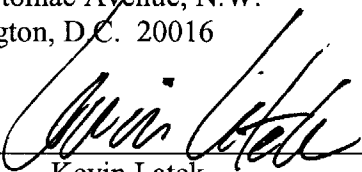
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Kevin Latek

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED - FCC

JAN 16 2004

Federal Communication Commission
Bureau / Office

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 7, Great Falls, MT)

Channel 21, Great Falls, MT)

Channel 43, Great Falls, MT)

Channel 51, Great Falls, MT)

FCC File No. BNPTVL-20000829AHJ; FIN 127241

FCC File No. BNPTVL-20000829AHI; FIN 127239

FCC File No. BNPTVL-20000829AHH; FIN 127238

FCC File No. BNPTVL-20000829AHF; FIN 127236

To: Chief, Media Bureau

INFORMAL OBJECTION

KRTV Communications, Inc. ("Cordillera"), licensee of KRTV(TV), Great Falls, Montana, by its attorneys and pursuant to Section 73.3587 of the Commission's Rules, hereby submits, in triplicate, this Informal Objection to the four above-referenced applications (the "LPTV Applications") of Beartooth Communications Company ("Beartooth") for permits to construct and operate new low power television stations in Great Falls, Montana. The LPTV Applications violate the bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. As such, the LPTV Applications are fatally deficient and the Media Bureau must dismiss them with prejudice.

For nearly five decades, the Commission has required every applicant for a broadcast permit to propose a transmission site for which it has "reasonable assurance in good faith that the site will be available to him."¹ The Commission's case law has made clear that applications are not acceptable from applicants who failed to obtain reasonable assurance of the availability of their proposed site at

¹ See *United Television Co., Inc. (WFAN-TV)*, 18 FCC 2d 363, ¶ 20 (1969), citing *Beacon Broadcasting System, Inc.*, 21 R.R. 727 (1961) and *Brennan Broadcasting Co.*, 15 R.R. 12e (1957).

the time they filed their applications.² This policy does not require an applicant to have a binding agreement or absolute assurance of a proposed site. On the other hand, the “mere possibility that the site will be available will not suffice.”³ Instead, the Commission requires that an applicant, by the time of an application’s filing, contact the property owner and receive in good faith some indication from the property owner that it “is favorably disposed toward making an arrangement.”⁴

In a 1984 order revising filing procedures for low power television and television translator applications, the Commission observed that an applicant’s “specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation.”⁵ The Commission observed, however, that a large number of LPTV and television translator applicants appeared to be submitting applications without the requisite site assurance. It therefore decided to add a specific certification of site availability to FCC Form 346, concluding that the certification would maintain the integrity of the application process and reduce processing delays caused by applicants who lacked the requisite site assurance.⁶

In 1998, the Commission revisited its decision to add the site availability certification requirement to broadcast facility applications and concluded that the addition had created more

² See, e.g., *Madalina Broadcasting, Inc.* 8 FCC Rcd 6344, ¶ 347 (1993) (dismissing application for lack of reasonable assurance of site availability where applicant’s principals did not contact the property owner prior to submission of application).

³ *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984), citing *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974).

⁴ *Id.*

⁵ *Id.*, citing *William F. Wallace*.

⁶ *Id.* at ¶ 30. The Commission concluded that adding the site certification requirement would “not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available.” *Id.*

administrative delays than it had spared.⁷ Accordingly, the Commission removed the certification from broadcast application forms. This decision, however, did not repeal or otherwise alter the underlying substantive requirement that an applicant possess reasonable assurance of site availability at the time of filing.⁸ Indeed, to remove any confusion about this issue, the Commission adopted the following instructions to FCC Forms 301 (with the emphasis in the original):

Applicants filing this FCC Form 301 are not required to certify that the site specified [herein] is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).⁹

Consequently, after nearly fifty years of applying its site assurance requirement to broadcast applications, the Commission continues to require "[a]ll applicants for broadcast facilities" to possess reasonable assurance of site availability when submitting their applications.

In this case, Beartooth lacked any assurance whatsoever that the transmission site proposed in the LPTV Applications would be available to it. The LPTV Applications propose to construct four new low power television stations on the tower located off of Highway 87 in Great Falls that

⁷ *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 13 FCC Rcd 15920, ¶¶ 172-175 (1998), *recon granted in part and denied in part*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

⁸ *Id.*

⁹ Instructions to FCC Form 301, at 2-3. The FCC included this exact same verbiage (with the same emphasis) in the Instructions to FCC Form 349, on which applicants apply to construct or modify FM translator and FM booster stations. The Instructions to FCC Form 346 omit certain portions of the Form 301 Instructions, including the quoted passage. Nevertheless, the quoted passage's reliance on *National Innovative Programming Network*, which involved a low power television station application filed on FCC Form 346, makes clear that the Commission's substantive site availability requirement continues to apply to "[a]ll applicants for broadcast facilities," including those submitting applications on FCC Form 346.

Cordillera owns and from which Cordillera's KRTV and other television stations broadcast (Antenna Structure Registration Number 1000138) (the "KRTV Tower").¹⁰ Despite the fact that Cordillera is the 100% owner of the KRTV Tower, Cordillera's employees and agents have never had a discussion with Beartooth concerning Beartooth's lease of space on the KRTV Tower for the facilities proposed in the LPTV Applications.¹¹ In fact, KRTV President and General Manager Bill Preston testifies in the attached Declaration as follows:

KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's staff has been contacted by Beartooth concerning its use of the KRTV Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KRTV Tower for its low power television stations, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

The attached Declarations of Mr. Preston and KRTV Chief Engineer Marlowe Rames establish conclusively that Beartooth did not contact the owner of its proposed transmission site, nor did it receive an indication from Cordillera that Cordillera "is favorably disposed" toward making space available for any of Beartooth's proposed new low power television stations. Beartooth therefore had no assurance of site availability, reasonable or otherwise, on the day that it submitted the LPTV Applications. Because the LPTV Applications contained false implied representations concerning Beartooth's reasonable assurance of site availability, the LPTV Applications are fatally deficient and unacceptable for filing. As such, the Media Bureau should dismiss the LPTV Applications forthwith.

¹⁰ The LPTV Applications are four of 32 applications filed by Beartooth on August 29, 2000, for consent to construct new low power television stations. Cordillera has not investigated the extent to which Beartooth may or may have had reasonable assurance of site availability for the other applications it filed.

¹¹ See Declaration of Bill Preston and Declaration of Marlowe Rames, *attached hereto*.

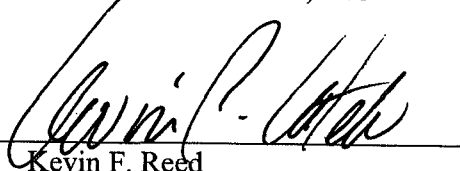
Conclusion

For the reasons set forth herein, Cordillera respectfully requests that the Bureau immediately dismiss the LPTV Applications with prejudice.

Respectfully submitted,

KRTV COMMUNICATIONS, INC.

By:

A handwritten signature in dark ink, appearing to read "Kevin P. Latek", is written over a horizontal line.

Kevin F. Reed

Kevin P. Latek

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 776-2000

January 16, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Application of

Beartooth Communications Company
 for Low Power Television Stations

Channel 7, Great Falls, MT

Channel 21, Great Falls, MT

Channel 43, Great Falls, MT

Channel 51, Great Falls, MT

FCC File No. BNPTVL-20000829AHJ; FIN 127241

FCC File No. BNPTVL-20000829AHI; FIN 127239

FCC File No. BNPTVL-20000829AHH; FIN 127238

FCC File No. BNPTVL-20000829AHF; FIN 127236

DECLARATION OF BILL PRESTON

I am Bill Preston and I have served as the President and General Manager of Television Station KRTV, Great Falls, Montana, since 1994. KRTV is licensed to KRTV Communications, Inc., which owns a broadcast tower located off of Highway 87 in Great Falls from which KRTV and other television stations broadcast (Antenna Structure Registration Number 1000138) (the "KRTV Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Great Falls, Montana, from the KRTV Tower.

KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's staff has been contacted by Beartooth concerning its use of the KRTV Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KRTV Tower for its low power television stations, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: Bill Preston

Bill Preston

January 16, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

 In re Application of)
)
)

Beartooth Communications Company)
 for Low Power Television Stations)
)

Channel 7, Great Falls, MT)

Channel 21, Great Falls, MT)

Channel 43, Great Falls, MT)

Channel 51, Great Falls, MT)
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FCC File No. BNPTVL-20000829AHL; FIN 127239

FCC File No. BNPTVL-20000829AHH; FIN 127238

FCC File No. BNPTVL-20000829AHF; FIN 127236

DECLARATION OF MARLOWE RAMES

I am Marlowe Rames and I have served as the Chief Engineer of Television Station KRTV, Great Falls, Montana, since 1990. KRTV broadcasts from a tower located off of Highway 87 in Great Falls (Antenna Structure Registration Number 1000138) (the "KRTV Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Great Falls, Montana, from the KRTV Tower.

To my knowledge, KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's engineering staff has been contacted by Beartooth concerning its use of the KRTV Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KRTV Tower for its low power television stations, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: Marlowe A. Rames

Marlowe Rames

January 16, 2004

CERTIFICATE OF SERVICE

I, Kevin Latek do hereby certify that on this 16th day of January 2004, I caused a copy of the foregoing Informal Objection to be served on the following:

By Hand:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

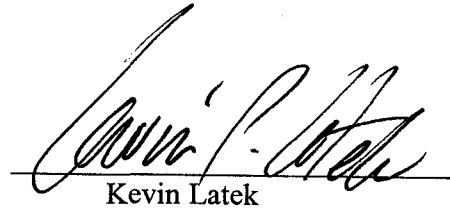
Joyce Bernstein.
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Hossein Hashemzadeh
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By U.S. Mail:

Jonathan Lichstein
Beartooth Communications Company
1500 Foremaster Lane
Las Vegas, NV 89101



Kevin Latek

RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED - FCC

JAN 16 2004

Federal Communication Commission
Bureau / Office

In re Application of)

Rocky Mountain Broadcasting Co.)
for Television Translator Station)

Channel 28, Great Falls, MT)

FCC File No. BNPTT-20000828BIK; FIN 131183

To: Chief, Media Bureau

INFORMAL OBJECTION

KRTV Communications, Inc. ("Cordillera"), licensee of KRTV(TV), Great Falls, Montana, by its attorneys and pursuant to Section 73.3587 of the Commission's Rules, hereby submits, in triplicate, this Informal Objection to the above-referenced application (the "Translator Application") of Rocky Mountain Broadcasting Company ("Rocky Mountain") for a permit to construct and operate a new television translator station in Great Falls, Montana. The Translator Application violates the bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. As such, the Translator Application is fatally deficient and the Media Bureau must dismiss it with prejudice.

For nearly five decades, the Commission has required every applicant for a broadcast permit to propose a transmission site for which it has "reasonable assurance in good faith that the site will be available to him."¹ The Commission's case law has made clear that applications are not acceptable from applicants who failed to obtain reasonable assurance of the availability of their proposed site at

¹ See *United Television Co., Inc. (WFAN-TV)*, 18 FCC 2d 363, ¶ 20 (1969), citing *Beacon Broadcasting System, Inc.*, 21 R.R. 727 (1961) and *Brennan Broadcasting Co.*, 15 R.R. 12e (1957).

the time they filed their applications.² This policy does not require an applicant to have a binding agreement or absolute assurance of a proposed site. On the other hand, the “mere possibility that the site will be available will not suffice.”³ Instead, the Commission requires that an applicant, by the time of an application’s filing, contact the property owner and receive in good faith some indication from the property owner that it “is favorably disposed toward making an arrangement.”⁴

In a 1984 order revising filing procedures for low power television and television translator applications, the Commission observed that an applicant’s “specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation.”⁵ The Commission observed, however, that a large number of LPTV and television translator applicants appeared to be submitting applications without the requisite site assurance. It therefore decided to add a specific certification of site availability to FCC Form 346, concluding that the certification would maintain the integrity of the application process and reduce processing delays caused by applicants who lacked the requisite site assurance.⁶

In 1998, the Commission revisited its decision to add the site availability certification requirement to broadcast facility applications and concluded that the addition had created more

² See, e.g., *Madalina Broadcasting, Inc.* 8 FCC Rcd 6344, ¶ 347 (1993) (dismissing application for lack of reasonable assurance of site availability where applicant’s principals did not contact the property owner prior to submission of application).

³ *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984), citing *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974).

⁴ *Id.*

⁵ *Id.*, citing *William F. Wallace*.

⁶ *Id.* at ¶ 30. The Commission concluded that adding the site certification requirement would “not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available.” *Id.*

administrative delays than it had spared.⁷ Accordingly, the Commission removed the certification from broadcast application forms. This decision, however, did not repeal or otherwise alter the underlying substantive requirement that an applicant possess reasonable assurance of site availability at the time of filing.⁸ Indeed, to remove any confusion about this issue, the Commission adopted the following instructions to FCC Forms 301 (with the emphasis in the original):

Applicants filing this FCC Form 301 are not required to certify that the site specified [herein] is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).⁹

Consequently, after nearly fifty years of applying its site assurance requirement to broadcast applications, the Commission continues to require "[a]ll applicants for broadcast facilities" to possess reasonable assurance of site availability when submitting their applications.

In this case, Rocky Mountain lacked any assurance whatsoever that the transmission site proposed in its Translator Application would be available to it. The Translator Application proposes to construct a new television translator station on the tower located off of Highway 87 in Great Falls

⁷ *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 13 FCC Rcd 15920, ¶¶ 172-175 (1998), *recon granted in part and denied in part*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

⁸ *Id.*

⁹ Instructions to FCC Form 301, at 2-3. The FCC included this exact same verbiage (with the same emphasis) in the Instructions to FCC Form 349, on which applicants apply to construct or modify FM translator and FM booster stations. The Instructions to FCC Form 346 omit certain portions of the Form 301 Instructions, including the quoted passage. Nevertheless, the quoted passage's reliance on *National Innovative Programming Network*, which involved a low power television station application filed on FCC Form 346, makes clear that the Commission's substantive site availability requirement continues to apply to "[a]ll applicants for broadcast facilities," including those submitting applications on FCC Form 346.

that Cordillera owns and from which Cordillera's KRTV and other television stations broadcast (Antenna Structure Registration Number 1000138) (the "KRTV Tower"). Despite the fact that Cordillera is the 100% owner of the KRTV Tower, Cordillera's employees and agents have never had a discussion with Rocky Mountain concerning Rocky Mountain's lease of space on the KRTV Tower for the facilities proposed in the Translator Application.¹⁰ In fact, KRTV President and General Manager Bill Preston testifies in the attached Declaration as follows:

KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Rocky Mountain or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's staff has been contacted by Rocky Mountain concerning its use of the KRTV Tower for a television translator station or for any other purpose. Moreover, had Rocky Mountain contacted me to inquire about the availability of the KRTV Tower for its translator station, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

The attached Declarations of Mr. Preston and KRTV Chief Engineer Marlowe Rames establish conclusively that Rocky Mountain did not contact the owner of its proposed transmission site, nor did it receive an indication from Cordillera that Cordillera "is favorably disposed" toward making space available for Rocky Mountain's proposed new translator station. Rocky Mountain therefore had no assurance of site availability, reasonable or otherwise, on the day that it submitted the Translator Application. Because the Translator Application contained a false implied representation concerning Rocky Mountain's reasonable assurance of site availability, the Translator Application is fatally deficient and unacceptable for filing. As such, the Media Bureau should dismiss the Translator Application forthwith.

¹⁰ See Declaration of Bill Preston and Declaration of Marlowe Rames, *attached hereto*.

Conclusion

For the reasons set forth herein, Cordillera respectfully requests that the Bureau immediately dismiss the Translator Application with prejudice.

Respectfully submitted,

KRTV COMMUNICATIONS, INC.

By: 

Kevin F. Reed

Kevin P. Latek

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC

1200 New Hampshire Avenue, N.W.

Washington, D.C. 20036

(202) 776-2000

January 16, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of

Rocky Mountain Broadcasting Co.
for Television Translator Station

Channel 28, Great Falls, MT

FCC File No. BNPTT-20000828BIK; F/N 131183

DECLARATION OF BILL PRESTON

I am Bill Preston and I have served as the President and General Manager of Television Station KRTV, Great Falls, Montana, since 1994. KRTV is licensed to KRTV Communications, Inc., which owns a broadcast tower located off of Highway 87 in Great Falls from which KRTV and other television stations broadcast (Antenna Structure Registration Number 1000138) (the "KRTV Tower").

I understand that Rocky Mountain Broadcasting Company ("Rocky Mountain") has filed the above-referenced application to construct and operate a new television translator station in Great Falls, Montana, from the KRTV Tower.

KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Rocky Mountain or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's staff has been contacted by Rocky Mountain concerning its use of the KRTV Tower for a television translator station or for any other purpose. Moreover, had Rocky Mountain contacted me to inquire about the availability of the KRTV Tower for its translator station, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: Bill Preston

Bill Preston

January 16, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

 In re Application of)
)
)

Rocky Mountain Broadcasting Co.)
 for Television Translator Station)
)

Channel 28, Great Falls, MT)
 _____)

FCC File No. BNPTT-20000828BIK; FIN 131183

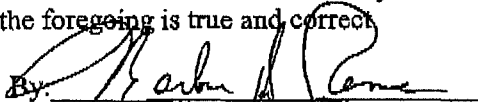
DECLARATION OF MARLOWE RAMES

I am Marlowe Rames and I have served as the Chief Engineer of Television Station KRTV, Great Falls, Montana, since 1990. KRTV broadcasts from a tower located off of Highway 87 in Great Falls (Antenna Structure Registration Number 1000138) (the "KRTV Tower").

I understand that Rocky Mountain Broadcasting Company ("Rocky Mountain") has filed the above-referenced application to construct and operate a new television translator station in Great Falls, Montana, from the KRTV Tower.

To my knowledge, KRTV has not entered into any agreement or understanding for the use of the KRTV Tower with Rocky Mountain or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KRTV's engineering staff has been contacted by Rocky Mountain concerning its use of the KRTV Tower for a television translator station or for any other purpose. Moreover, had Rocky Mountain contacted me to inquire about the availability of the KRTV Tower for its translator station, I would have responded that the KRTV Tower would not be available due to the addition of digital television facilities for KRTV and KFBB.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: 
 Marlowe Rames

January 16, 2004

CERTIFICATE OF SERVICE

I, Kevin Latek do hereby certify that on this 16th day of January 2004, I caused a copy of the foregoing Informal Objection to be served on the following:

By Hand:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Hossein Hashemzadeh
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Joyce Bernstein.
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By U.S. Mail:

Suzanne E. Rogers
Law Offices of Suzanne E. Rogers
c/o Rocky Mountain Broadcasting Company
455 Capitol Mall, Suite 210
Sacramento, CA 95814



Kevin Latek

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 10, Missoula, MT)
Channel 12, Missoula, MT)
Channel 43, Missoula, MT)
Channel 51, Missoula, MT)

RECEIVED - FCC

JAN 30 2004

Federal Communication Commission
Bureau / Office

FCC File No. BNPTVL-20000829AJF; FIN 127781
FCC File No. BNPTVL-20000829AJG; FIN 127783
FCC File No. BNPTVL-20000829AJJ; FIN 127790
FCC File No. BNPTVL-20000829AJL; FIN 127796

To: Chief, Media Bureau

INFORMAL OBJECTION

KPAX Communications, Inc. ("Cordillera"), licensee of KPAX-TV, Missoula, Montana, by its attorneys and pursuant to Section 73.3587 of the Commission's Rules, hereby submits, in triplicate, this Informal Objection to the four above-referenced applications (the "LPTV Applications") of Beartooth Communications Company ("Beartooth") for permits to construct and operate new low power television stations in Missoula, Montana. The LPTV Applications violate the bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. As such, the LPTV Applications are fatally deficient and the Media Bureau must dismiss them with prejudice.

For nearly five decades, the Commission has required every applicant for a broadcast permit to propose a transmission site for which it has "reasonable assurance in good faith that the site will be available to him."¹ The Commission's case law has made clear that applications are not acceptable from applicants who failed to obtain reasonable assurance of the availability of their proposed site at

¹ See *United Television Co., Inc. (WFAN-TV)*, 18 FCC 2d 363, ¶ 20 (1969), citing *Beacon Broadcasting System, Inc.*, 21 R.R. 727 (1961) and *Brennan Broadcasting Co.*, 15 R.R. 12e (1957).

the time they filed their applications.² This policy does not require an applicant to have a binding agreement or absolute assurance of a proposed site. On the other hand, the “mere possibility that the site will be available will not suffice.”³ Instead, the Commission requires that an applicant, by the time of an application’s filing, contact the property owner and receive in good faith some indication from the property owner that it “is favorably disposed toward making an arrangement.”⁴

In a 1984 order revising filing procedures for low power television and television translator applications, the Commission observed that an applicant’s “specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation.”⁵ The Commission observed, however, that a large number of LPTV and television translator applicants appeared to be submitting applications without the requisite site assurance. It therefore decided to add a specific certification of site availability to FCC Form 346, concluding that the certification would maintain the integrity of the application process and reduce processing delays caused by applicants who lacked the requisite site assurance.⁶

In 1998, the Commission revisited its decision to add the site availability certification requirement to broadcast facility applications and concluded that the addition had created more administrative delays than it had spared.⁷ Accordingly, the Commission removed the certification

² See, e.g., *Madalina Broadcasting, Inc.* 8 FCC Rcd 6344, ¶ 347 (1993) (dismissing application for lack of reasonable assurance of site availability where applicant’s principals did not contact the property owner prior to submission of application).

³ *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984), citing *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974).

⁴ *Id.*

⁵ *Id.*, citing *William F. Wallace*.

⁶ *Id.* at ¶ 30. The Commission concluded that adding the site certification requirement would “not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available.” *Id.*

⁷ *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 13 FCC Rcd 15920,

from broadcast application forms. This decision, however, did not repeal or otherwise alter the underlying substantive requirement that an applicant possess reasonable assurance of site availability at the time of filing.⁸ Indeed, to remove any confusion about this issue, the Commission adopted the following instructions to FCC Forms 301 (with the emphasis in the original):

Applicants filing this FCC Form 301 are not required to certify that the site specified [herein] is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).⁹

Consequently, after nearly fifty years of applying its site assurance requirement to broadcast applications, the Commission continues to require "[a]ll applicants for broadcast facilities" to possess reasonable assurance of site availability when submitting their applications.

In this case, Beartooth lacked any assurance whatsoever that the transmission site proposed in the LPTV Applications would be available to it. The LPTV Applications propose to construct four new low power television stations on the tower located four miles east of Evaro, Montana on TV Mountain that Cordillera owns and from which Cordillera's KPAX and other television stations

¶¶ 172-175 (1998), *recon granted in part and denied in part*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

⁸ *Id.*

⁹ Instructions to FCC Form 301, at 2-3. The FCC included this exact same verbiage (with the same emphasis) in the Instructions to FCC Form 349, on which applicants apply to construct or modify FM translator and FM booster stations. The Instructions to FCC Form 346 omit certain portions of the Form 301 Instructions, including the quoted passage. Nevertheless, the quoted passage's reliance on *National Innovative Programming Network*, which involved a low power television station application filed on FCC Form 346, makes clear that the Commission's substantive site availability requirement continues to apply to "[a]ll applicants for broadcast facilities," including those submitting applications on FCC Form 346.

broadcast (Antenna Structure Registration Number 1004605) (the "KPAX Tower").¹⁰ Despite the fact that Cordillera is the 100% owner of the KPAX Tower, Cordillera's employees and agents have never had a discussion with Beartooth concerning Beartooth's lease of space on the KPAX Tower for the facilities proposed in the LPTV Applications.¹¹ In fact, KPAX President and General Manager Robert Hermes testifies in the attached Declaration as follows:

KPAX has not entered into any agreement or understanding for the use of the KPAX Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KPAX's staff has been contacted by Beartooth concerning its use of the KPAX Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KPAX Tower for its low power television stations, I would have responded that the KPAX Tower would not be available due to the addition of digital television facilities for KPAX.

The attached Declarations of Mr. Hermes and KPAX Chief Engineer Larry Arbaugh establish conclusively that Beartooth did not contact the owner of its proposed transmission site, nor did it receive an indication from Cordillera that Cordillera "is favorably disposed" toward making space available for any of Beartooth's proposed new low power television stations. Beartooth therefore had no assurance of site availability, reasonable or otherwise, on the day that it submitted the LPTV Applications. Because the LPTV Applications contained false implied representations concerning Beartooth's reasonable assurance of site availability, the LPTV Applications are fatally deficient and unacceptable for filing. As such, the Media Bureau should dismiss the LPTV Applications forthwith.

¹⁰ The LPTV Applications are four of 32 applications filed by Beartooth on August 29, 2000, for consent to construct new low power television stations. Fully one-half of Beartooth's LPTV applications identify towers owned by Cordillera and its affiliates. Cordillera is challenging all sixteen applications for the same reasons set forth herein.


¹¹ See Declaration of Robert Hermes and Declaration of Larry Arbaugh, *attached hereto*.

Conclusion

For the reasons set forth herein, Cordillera respectfully requests that the Bureau immediately dismiss the LPTV Applications with prejudice.

Respectfully submitted,

KPAX COMMUNICATIONS, INC.

By: 
Kevin F. Reed
Kevin P. Latek

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 776-2000

January 30, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 10, Missoula, MT)
Channel 12, Missoula, MT)
Channel 43, Missoula, MT)
Channel 51, Missoula, MT)

FCC File No. BNPTVL-20000829AJF; FIN 127781
FCC File No. BNPTVL-20000829AJG; FIN 127783
FCC File No. BNPTVL-20000829AJJ; FIN 127790
FCC File No. BNPTVL-20000829AJL; FIN 127796

DECLARATION OF ROBERT HERMES

I am Robert Hermes and I have served as the President and General Manager of Television Station KPAX, Missoula, Montana, since 1997. KPAX is licensed to KPAX Communications, Inc., which owns a broadcast tower located four miles east of Evaro, Montana on TV Mountain from which KPAX and other television stations broadcast (Antenna Structure Registration Number 1004605) (the "KPAX Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Missoula, Montana, from the KPAX Tower.

KPAX has not entered into any agreement or understanding for the use of the KPAX Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KPAX's staff has been contacted by Beartooth concerning its use of the KPAX Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KPAX Tower for its low power television stations, I would have responded that the KPAX Tower would not be available due to the addition of digital television facilities for KPAX.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: _____

Robert Hermes

January 28, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)
In re Application of)
)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 10, Missoula, MT)

Channel 12, Missoula, MT)

Channel 43, Missoula, MT)

Channel 51, Missoula, MT)
_____)

FCC File No. BNPTVL-20000829AJF; FIN 127781

FCC File No. BNPTVL-20000829AJG; FIN 127783

FCC File No. BNPTVL-20000829AJJ; FIN 127790

FCC File No. BNPTVL-20000829AJL; FIN 127796

DECLARATION OF LARRY ARBAUGH

I am Larry Arbaugh and I have served as the Chief Engineer of Television Station KPAX, Missoula, Montana, since 1995. KPAX broadcasts from a tower located four miles east of Evaro, Montana on TV Mountain (Antenna Structure Registration Number 1004605) (the "KPAX Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Missoula, Montana, from the KPAX Tower.

To my knowledge, KPAX has not entered into any agreement or understanding for the use of the KPAX Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KPAX's engineering staff has been contacted by Beartooth concerning its use of the KPAX Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KPAX Tower for its low power television stations, I would have responded that the KPAX Tower would not be available due to the addition of digital television facilities for KPAX.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: 
Larry Arbaugh

January 28, 2004

CERTIFICATE OF SERVICE

I, Kevin Latek do hereby certify that on this 30th day of January 2004, I caused a copy of the foregoing Informal Objection to be served on the following:

By Hand:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Hossein Hashemzadeh
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Joyce Bernstein.
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By U.S. Mail:

Jonathan Lichstein
Beartooth Communications Company
1500 Foremaster Lane
Las Vegas, NV 89101


Kevin Latek

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED - FCC

JAN 30 2004

Federal Communication Commission
Bureau / Office

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 7, Billings, MT)

Channel 31, Billings, MT)

Channel 41, Billings, MT)

Channel 46, Billings, MT)

Channel 49, Billings, MT)

FCC File No. BNPTVL-20000829ALP; FIN 129207

FCC File No. BNPTVL-20000829AJW; FIN 127852

FCC File No. BNPTVL-20000829AJU; FIN 127846

FCC File No. BNPTVL-20000829AJT; FIN 127841

FCC File No. BNPTVL-20000829AHO; FIN 127246

To: Chief, Media Bureau

INFORMAL OBJECTION

KTVQ Communications, Inc. ("Cordillera"), licensee of KTVQ(TV), Billings, Montana, by its attorneys and pursuant to Section 73.3587 of the Commission's Rules, hereby submits, in triplicate, this Informal Objection to the five above-referenced applications (the "LPTV Applications") of Beartooth Communications Company ("Beartooth") for permits to construct and operate new low power television stations in Billings, Montana. The LPTV Applications violate the bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. As such, the LPTV Applications are fatally deficient and the Media Bureau must dismiss them with prejudice.

For nearly five decades, the Commission has required every applicant for a broadcast permit to propose a transmission site for which it has "reasonable assurance in good faith that the site will be available to him."¹ The Commission's case law has made clear that applications are not acceptable from applicants who failed to obtain reasonable assurance of the availability of their proposed site at

¹ See *United Television Co., Inc. (WFAN-TV)*, 18 FCC 2d 363, ¶ 20 (1969), citing *Beacon Broadcasting System, Inc.*, 21 R.R. 727 (1961) and *Brennan Broadcasting Co.*, 15 R.R. 12e (1957).

the time they filed their applications.² This policy does not require an applicant to have a binding agreement or absolute assurance of a proposed site. On the other hand, the “mere possibility that the site will be available will not suffice.”³ Instead, the Commission requires that an applicant, by the time of an application’s filing, contact the property owner and receive in good faith some indication from the property owner that it “is favorably disposed toward making an arrangement.”⁴

In a 1984 order revising filing procedures for low power television and television translator applications, the Commission observed that an applicant’s “specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation.”⁵ The Commission observed, however, that a large number of LPTV and television translator applicants appeared to be submitting applications without the requisite site assurance. It therefore decided to add a specific certification of site availability to FCC Form 346, concluding that the certification would maintain the integrity of the application process and reduce processing delays caused by applicants who lacked the requisite site assurance.⁶

In 1998, the Commission revisited its decision to add the site availability certification requirement to broadcast facility applications and concluded that the addition had created more administrative delays than it had spared.⁷ Accordingly, the Commission removed the certification

² See, e.g., *Madalina Broadcasting, Inc.* 8 FCC Rcd 6344, ¶ 347 (1993) (dismissing application for lack of reasonable assurance of site availability where applicant’s principals did not contact the property owner prior to submission of application).

³ *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984), citing *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974).

⁴ *Id.*

⁵ *Id.*, citing *William F. Wallace*.

⁶ *Id.* at ¶ 30. The Commission concluded that adding the site certification requirement would “not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available.” *Id.*

⁷ *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 13 FCC Rcd 15920,

from broadcast application forms. This decision, however, did not repeal or otherwise alter the underlying substantive requirement that an applicant possess reasonable assurance of site availability at the time of filing.⁸ Indeed, to remove any confusion about this issue, the Commission adopted the following instructions to FCC Forms 301 (with the emphasis in the original):

Applicants filing this FCC Form 301 are not required to certify that the site specified [herein] is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).⁹

Consequently, after nearly fifty years of applying its site assurance requirement to broadcast applications, the Commission continues to require "[a]ll applicants for broadcast facilities" to possess reasonable assurance of site availability when submitting their applications.

In this case, Beartooth lacked any assurance whatsoever that the transmission site proposed in the LPTV Applications would be available to it. The LPTV Applications propose to construct five new low power television stations on the tower located off of Coburn Road near Mile Marker 2 in Billings that Cordillera owns and from which Cordillera's KTVQ and other television stations

¶¶ 172-175 (1998), *recon granted in part and denied in part*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

⁸ *Id.*

⁹ Instructions to FCC Form 301, at 2-3. The FCC included this exact same verbiage (with the same emphasis) in the Instructions to FCC Form 349, on which applicants apply to construct or modify FM translator and FM booster stations. The Instructions to FCC Form 346 omit certain portions of the Form 301 Instructions, including the quoted passage. Nevertheless, the quoted passage's reliance on *National Innovative Programming Network*, which involved a low power television station application filed on FCC Form 346, makes clear that the Commission's substantive site availability requirement continues to apply to "[a]ll applicants for broadcast facilities," including those submitting applications on FCC Form 346.

broadcast (Antenna Structure Registration Number 1001064) (the "KTVQ Tower").¹⁰ Despite the fact that Cordillera is the 100% owner of the KTVQ Tower, Cordillera's employees and agents have never had a discussion with Beartooth concerning Beartooth's lease of space on the KTVQ Tower for the facilities proposed in the LPTV Applications.¹¹ In fact, KTVQ President and General Manager Lamont Wallis testifies in the attached Declaration as follows:

KTVQ has not entered into any agreement or understanding for the use of the KTVQ Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KTVQ's staff has been contacted by Beartooth concerning its use of the KTVQ Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KTVQ Tower for its low power television stations, I would have responded that the KTVQ Tower would not be available due to the addition of digital television facilities for KTVQ.

The attached Declarations of Mr. Wallis and KTVQ Chief Engineer John Webber establish conclusively that Beartooth did not contact the owner of its proposed transmission site, nor did it receive an indication from Cordillera that Cordillera "is favorably disposed" toward making space available for any of Beartooth's proposed new low power television stations. Beartooth therefore had no assurance of site availability, reasonable or otherwise, on the day that it submitted the LPTV Applications. Because the LPTV Applications contained false implied representations concerning Beartooth's reasonable assurance of site availability, the LPTV Applications are fatally deficient and unacceptable for filing. As such, the Media Bureau should dismiss the LPTV Applications forthwith.

¹⁰ The LPTV Applications are five of 32 applications filed by Beartooth on August 29, 2000, for consent to construct new low power television stations. Fully one-half of Beartooth's LPTV applications identify towers owned by Cordillera and its affiliates. Cordillera is challenging all sixteen applications for the same reasons set forth herein.

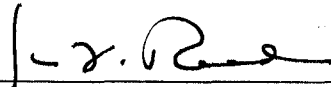
¹¹ See Declaration of Lamont Wallis and Declaration of John Webber, *attached hereto*.

Conclusion

For the reasons set forth herein, Cordillera respectfully requests that the Bureau immediately dismiss the LPTV Applications with prejudice.

Respectfully submitted,

KTVQ COMMUNICATIONS, INC.

By: 
Kevin F. Reed
Kevin P. Latek

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 776-2000

January 30, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 7, Billings, MT)
Channel 31, Billings, MT)
Channel 41, Billings, MT)
Channel 46, Billings, MT)
Channel 49, Billings, MT)

FCC File No. BNPTVL-20000829ALP; FIN 129207
FCC File No. BNPTVL-20000829AJW; FIN 127852
FCC File No. BNPTVL-20000829AJU; FIN 127846
FCC File No. BNPTVL-20000829AJT; FIN 127841
FCC File No. BNPTVL-20000829AHO; FIN 127246

DECLARATION OF LAMONT WALLIS

I am Lamont Wallis and I have served as the President and General Manager of Television Station KTVQ, Billings, Montana, since 1996. KTVQ is licensed to KTVQ Communications, Inc., which owns a broadcast tower located off of Coburn Road near Mile Marker 2 in Billings from which KTVQ and other television stations broadcast (Antenna Structure Registration Number 1001064) (the "KTVQ Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Billings, Montana, from the KTVQ Tower.

KTVQ has not entered into any agreement or understanding for the use of the KTVQ Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KTVQ's staff has been contacted by Beartooth concerning its use of the KTVQ Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KTVQ Tower for its low power television stations, I would have responded that the KTVQ Tower would not be available due to the addition of digital television facilities for KTVQ.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: _____


Lamont Wallis

January 28, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

_____))
 In re Application of)
)
 Beartooth Communications Company)
 for Low Power Television Stations)

Channel 7, Billings, MT)	FCC File No. BNPTVL-20000829ALP; FIN 129207
Channel 31, Billings, MT)	FCC File No. BNPTVL-20000829AJW; FIN 127852
Channel 41, Billings, MT)	FCC File No. BNPTVL-20000829AJU; FIN 127846
Channel 46, Billings, MT)	FCC File No. BNPTVL-20000829AJT; FIN 127841
Channel 49, Billings, MT)	FCC File No. BNPTVL-20000829AHO; FIN 127246
_____))	

DECLARATION OF JOHN WEBBER

I am John Webber and I have served as the Chief Engineer of Television Station KTVQ, Billings, Montana, since 1986. KTVQ broadcasts from a tower located off of Coburn Road near Mile Marker 2 in Billings (Antenna Structure Registration Number 1001064) (the "KTVQ Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Billings, Montana, from the KTVQ Tower.

To my knowledge, KTVQ has not entered into any agreement or understanding for the use of the KTVQ Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KTVQ's engineering staff has been contacted by Beartooth concerning its use of the KTVQ Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KTVQ Tower for its low power television stations, I would have responded that the KTVQ Tower would not be available due to the addition of digital television facilities for KTVQ.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: John Webber
 John Webber

January 28, 2004

CERTIFICATE OF SERVICE

I, Kevin Latek do hereby certify that on this 30th day of January 2004, I caused a copy of the foregoing Informal Objection to be served on the following:

By Hand:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Hossein Hashemzadeh
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Joyce Bernstein.
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By U.S. Mail:

Jonathan Lichstein
Beartooth Communications Company
1500 Foremaster Lane
Las Vegas, NV 89101



Kevin Latek

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 30 2004

Federal Communication Commission
Bureau / Office

In re Application of)

Beartooth Communications Company)
for Low Power Television Stations)

Channel 11, Butte, MT)
Channel 47, Butte, MT)
Channel 51, Butte, MT)

FCC File No. BNPTVL-20000829AHM; FIN 127244
FCC File No. BNPTVL-20000829AHL; FIN 127243
FCC File No. BNPTVL-20000829AHK; FIN 127242

To: Chief, Media Bureau

INFORMAL OBJECTION

KXLF Communications, Inc. ("Cordillera"), licensee of KXLF-TV, Butte, Montana, by its attorneys and pursuant to Section 73.3587 of the Commission's Rules, hereby submits, in triplicate, this Informal Objection to the three above-referenced applications (the "LPTV Applications") of Beartooth Communications Company ("Beartooth") for permits to construct and operate new low power television stations in Butte, Montana. The LPTV Applications violate the bedrock Commission policy requiring all broadcast facility applicants to obtain reasonable assurance of site availability prior to submitting an application. As such, the LPTV Applications are fatally deficient and the Media Bureau must dismiss them with prejudice.

For nearly five decades, the Commission has required every applicant for a broadcast permit to propose a transmission site for which it has "reasonable assurance in good faith that the site will be available to him."¹ The Commission's case law has made clear that applications are not acceptable from applicants who failed to obtain reasonable assurance of the availability of their proposed site at

¹ See *United Television Co., Inc. (WFAN-TV)*, 18 FCC 2d 363, ¶ 20 (1969), citing *Beacon Broadcasting System, Inc.*, 21 R.R. 727 (1961) and *Brennan Broadcasting Co.*, 15 R.R. 12e (1957).

the time they filed their applications.² This policy does not require an applicant to have a binding agreement or absolute assurance of a proposed site. On the other hand, the "mere possibility that the site will be available will not suffice."³ Instead, the Commission requires that an applicant, by the time of an application's filing, contact the property owner and receive in good faith some indication from the property owner that it "is favorably disposed toward making an arrangement."⁴

In a 1984 order revising filing procedures for low power television and television translator applications, the Commission observed that an applicant's "specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation."⁵ The Commission observed, however, that a large number of LPTV and television translator applicants appeared to be submitting applications without the requisite site assurance. It therefore decided to add a specific certification of site availability to FCC Form 346, concluding that the certification would maintain the integrity of the application process and reduce processing delays caused by applicants who lacked the requisite site assurance.⁶

In 1998, the Commission revisited its decision to add the site availability certification requirement to broadcast facility applications and concluded that the addition had created more administrative delays than it had spared.⁷ Accordingly, the Commission removed the certification

² See, e.g., *Madalina Broadcasting, Inc.* 8 FCC Rcd 6344, ¶ 347 (1993) (dismissing application for lack of reasonable assurance of site availability where applicant's principals did not contact the property owner prior to submission of application).

³ *Low Power Television and Television Translator Service*, 102 FCC 2d 295, 309 (1984), citing *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974).

⁴ *Id.*

⁵ *Id.*, citing *William F. Wallace*.

⁶ *Id.* at ¶ 30. The Commission concluded that adding the site certification requirement would "not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available." *Id.*

⁷ *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, 13 FCC Rcd 15920,

from broadcast application forms. This decision, however, did not repeal or otherwise alter the underlying substantive requirement that an applicant possess reasonable assurance of site availability at the time of filing.⁸ Indeed, to remove any confusion about this issue, the Commission adopted the following instructions to FCC Forms 301 (with the emphasis in the original):

Applicants filing this FCC Form 301 are not required to certify that the site specified [herein] is available for its intended use. See Auctions Order, 13 FCC Rcd at 15988. Nevertheless, the Commission's substantive site availability requirements are unchanged. All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available **at the time they file FCC Form 301**. See William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1989); Genesee Communications, Inc., 3 FCC Rcd 3595 (1988); National Innovative Programming Network, 2 FCC Rcd 5641 (1987).⁹

Consequently, after nearly fifty years of applying its site assurance requirement to broadcast applications, the Commission continues to require "[a]ll applicants for broadcast facilities" to possess reasonable assurance of site availability when submitting their applications.

In this case, Beartooth lacked any assurance whatsoever that the transmission site proposed in the LPTV Applications would be available to it. The LPTV Applications propose to construct three new low power television stations on the tower located approximately 3.2 miles east of XL Heights in Butte that Cordillera owns and from which Cordillera's KXLF and other television stations

¶¶ 172-175 (1998), *recon granted in part and denied in part*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999).

⁸ *Id.*

⁹ Instructions to FCC Form 301, at 2-3. The FCC included this exact same verbiage (with the same emphasis) in the Instructions to FCC Form 349, on which applicants apply to construct or modify FM translator and FM booster stations. The Instructions to FCC Form 346 omit certain portions of the Form 301 Instructions, including the quoted passage. Nevertheless, the quoted passage's reliance on *National Innovative Programming Network*, which involved a low power television station application filed on FCC Form 346, makes clear that the Commission's substantive site availability requirement continues to apply to "[a]ll applicants for broadcast facilities," including those submitting applications on FCC Form 346.

broadcast (Antenna Structure Registration Number 1001059) (the "KXLF Tower").¹⁰ Despite the fact that Cordillera is the 100% owner of the KXLF Tower, Cordillera's employees and agents have never had a discussion with Beartooth concerning Beartooth's lease of space on the KXLF Tower for the facilities proposed in the LPTV Applications.¹¹ In fact, KXLF General Manager Patrick Cooney testifies in the attached Declaration as follows:

KXLF has not entered into any agreement or understanding for the use of the KXLF Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KXLF's staff has been contacted by Beartooth concerning its use of the KXLF Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KXLF Tower for its low power television stations, I would have responded that the KXLF Tower would not be available due to the addition of digital television facilities for KXLF.

The attached Declarations of Mr. Cooney and KXLF Chief Engineer Ron Schlosser establish conclusively that Beartooth did not contact the owner of its proposed transmission site, nor did it receive an indication from Cordillera that Cordillera "is favorably disposed" toward making space available for any of Beartooth's proposed new low power television stations. Beartooth therefore had no assurance of site availability, reasonable or otherwise, on the day that it submitted the LPTV Applications. Because the LPTV Applications contained false implied representations concerning Beartooth's reasonable assurance of site availability, the LPTV Applications are fatally deficient and unacceptable for filing. As such, the Media Bureau should dismiss the LPTV Applications forthwith.

¹⁰ The LPTV Applications are three of 32 applications filed by Beartooth on August 29, 2000, for consent to construct new low power television stations. Fully one-half of Beartooth's LPTV applications identify towers owned by Cordillera and its affiliates. Cordillera is challenging all sixteen applications for the same reasons set forth herein.

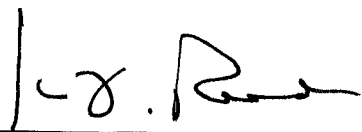
¹¹ See Declaration of Patrick Cooney and Declaration of Ron Schlosser, *attached hereto*.

Conclusion

For the reasons set forth herein, Cordillera respectfully requests that the Bureau immediately dismiss the LPTV Applications with prejudice.

Respectfully submitted,

KXLF COMMUNICATIONS, INC.

By: 
Kevin F. Reed
Kevin P. Latek

Its Attorneys

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1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
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January 30, 2004

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DECLARATION OF PATRICK COONEY

I am Patrick Cooney and I have served as the General Manager of Television Station KXLF, Butte, Montana, since 1/1/02. KXLF is licensed to KXLF Communications, Inc., which owns a broadcast tower located approximately 3.2 miles east of XL Heights in Butte from which KXLF and other television stations broadcast (Antenna Structure Registration Number 1001059) (the "KXLF Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Butte, Montana, from the KXLF Tower.

KXLF has not entered into any agreement or understanding for the use of the KXLF Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KXLF's staff has been contacted by Beartooth concerning its use of the KXLF Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KXLF Tower for its low power television stations, I would have responded that the KXLF Tower would not be available due to the addition of digital television facilities for KXLF.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: 
 Patrick Cooney

January 28, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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DECLARATION OF RON SCHLOSSER

I am Ron Schlosser and I have served as the Chief Engineer of Television Station KXLF, Butte, Montana, since 5/11/92. KXLF broadcasts from a tower located approximately 3.2 miles east of XL Heights in Butte (Antenna Structure Registration Number 1001059) (the "KXLF Tower").

I understand that Beartooth Communications Company ("Beartooth") has filed the above-referenced applications to construct and operate new low power television stations in Butte, Montana, from the KXLF Tower.

To my knowledge, KXLF has not entered into any agreement or understanding for the use of the KXLF Tower with Beartooth or, indeed, with any other low power television station applicant or television translator applicant in the FCC's August 2000 filing window. Neither I nor anyone on KXLF's engineering staff has been contacted by Beartooth concerning its use of the KXLF Tower for low power television stations or for any other purpose. Moreover, had Beartooth contacted me to inquire about the availability of the KXLF Tower for its low power television stations, I would have responded that the KXLF Tower would not be available due to the addition of digital television facilities for KXLF.

I have reviewed the foregoing Informal Objection. The factual matters stated therein, other than those assertions of which the Federal Communications Commission may take official notice and those that are otherwise supported therein, are true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: Ron Schlosser

Ron Schlosser

January 28 2004

CERTIFICATE OF SERVICE

I, Kevin Latek do hereby certify that on this 30th day of January 2004, I caused a copy of the foregoing Informal Objection to be served on the following:

By Hand:

Barbara Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

By Hand:

Joyce Bernstein.
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
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By Hand:

Hossein Hashemzadeh
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